

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

July 28, 2005

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, July 28, 2005, at 1:47 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Morris K. Dunlap, Chair; Harold Warner Jr. Vice-Chair; James Barfield; Darrell Downing; John W. McKay Jr.; Bill Johnson (Out @ 3:06); Bob Aldrich; Elizabeth Bishop; M.S. Mitchell; Denise Sherman; Bud Hentzen; Ronald Marnell and Hoyt Hillman. Gary K. Gibbs was not present. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; David Barber, Advanced Plans Manager; and Rose Simmering, Recording Secretary.

1. Approval of June 23, 2005 and July 14, 2005 meeting minutes.

MOTION: To approve the June 23, 2005 meeting minutes.

WARNER moved, **MITCHELL** seconded the motion, and it carried 13-0.

MOTION: To approve the July 14, 2005 meeting minutes.

WARNER moved, **BISHOP** seconded the motion, and it carried 13-0.

2. City of Wichita 2005-2014 Capital Improvement Program presentation by Jay Newton, Senior Budget Analyst.

JAY NEWTON I presented an overview on July 14, 2005. Since that time the entire MAPC has been provided with a copy of the entire CIP. This morning I met with the Advance Plans Committee, and I felt like we had a productive discussion outlining some process improvements so that Advance Plans Committee could be included in the process, and be updated periodically.

BARFIELD Each year we see the CIP coming forward, and each time we are spending more money then we did on the previous one. Yet, year after year, as we did last week, we experience City-wide street flooding after a brief thunderstorm. When and how are we going to address that problem?

NEWTON The city staff has made recommendations to the Wichita City Council (WCC) on the Equivalent Residential Unit Rate (ERU), which is what funds City drainage improvements. We have identified projects in some of the basins of the City, and we really have recommended improvements that are intended to reduce flooding in homes and businesses. Street flooding is an annoyance and a problem but we would like to target resources at home and business flooding first. The City was incorporated for about 120 years before we had a drainage utility, and for the last decade or more we have been playing catch up on those drainage issues.

BARFIELD You say playing catch up but it appears to me that we are getting further and further behind on each and every time we have one of these thunderstorms. It appears that we see flooding crop up in a new area.

DUNLAP We have had a presentation on the drainage, and the bottom line is that we will not ever have streets that don't flood under unusual heavy rain storms ... it just won't ever get there.

BARFIELD It just seems there are not enough funds allocated to this problem.

MITCHELL Mr. Newton, I would like to thank you for the presentation that you made to the Advance Plans Committee because my concern was that they had not reviewed the CIP before the entire MAPC reviewed it.

DUNLAP We had a long discussion this morning about how we might be better involved in the preparation, and I am one of the Commissioners that made a lot of noise about getting this dropped on me, and say here it is and approve it. We are here as part of the function that says input and planning, and therefore we are going to come up with a plan where we will be properly involved in the discussions that they are going through before they set the CIP. Therefore, we won't get back to the point where this will drop in on us, and say approve it the same day that we get it, and the same comments apply to the county.

HILLMAN I found lack of information in the drainage areas, and didn't really acquire that until one of the MAPD staff provided some information on that.

MOTION: MAPC finds the City of Wichita CIP is consistent with the Comprehensive Plan.

MCKAY moved **JOHNSON** seconded the motion, and it carried 13-0.

3. Sedgwick County 2006-2010 Capital Improvement Program presentation by Peter Giroux, Senior Management Analyst.

PETER GIROUX This morning, Jim Weber, Deputy Director of Public Works, and I presented the 2006-2010 Sedgwick County Capital Improvement Program (CIP) to the Advance Plans Committee. The objective of our presentation to you is to have the MAPC find the CIP consistent with the Comprehensive Plan.

Some of the more noteworthy projects in the proposed CIP are:

- Widening of 13th Street from K-96 to 159th Street East in 2006.
- Widening of Meridian from 47th to 71 Street South and widening of Ridge from K-96 to 53rd Street North in 2007
- Widening of 21st from K-96 to 159th St East and widening of 63rd St South from Broadway to Hydraulic in 2008
- A new bridge on Hydraulic over the Wichita Valley Center Flood Control Project in 2009
- Widening of 159th St East from US54 to 21st Street North in 2010

DUNLAP This morning at the Advance Plans Committee meeting Pete and Jim Weber gave us a presentation.

GIROUX We have had a negative view of sales tax, and the sales tax in general has been in decline since a high point in about 1999. We have turned that corner, and we are not right at 4 percent yet for 2005, but our forecast is figured on 3 percent. KDOT is going to be sending us additional federal funds, and that will double what we planned to receive in the 2005-2009 plan that we sent you last year.

DUNLAP The arena tax is not part of what you showed us here.

GIROUX That is correct. We had the first meeting of the Oversight Committee this week, and the entire flow will be isolated from these sales tax receipts.

DUNLAP I want it known that is not the reason for the increase in the budget.

GIROUX That is correct.

JIM WEBER, DEPUTY DIRECTOR OF PUBLIC WORKS Pete went back across the street and took the handout that we gave you this morning, and he has added color to it which may help to demonstrate the incremental nature of the CIP. If you take the 2005-2009 CIP book and this sheet for projects over \$1million you could track from this book where we are going in 2006. Go to the yellow highlighted ones.

Facility/Drainage Spreadsheet, Roads/Bridges/Summary, Infrastructure Project pages were discussed by Jim Weber.

MCKAY Jim, did you say on 119th Street that you were going to go from Auburn Hills to K-42?

WEBER We would start at Auburn Hills and go down to K-42. We will not leave a gap.

DUNLAP I assume that the projects that are currently budgeted in the plan and they don't happen, what happens to the money? Does it get re-allocated if they don't spend it? Does it go to lawn mowing?

GIROUX The only money that will be had is what the BOCC approves for 2006 on August 3rd. The rest of it we forecast what we anticipated for our sales tax money. The drainage projects compete with other cash funded facility projects.

DUNLAP So the default mode is that if it is not spent on that project it goes back to the general funds?

GIROUX It will just vaporize. The recommended budget was presented by the Manager on July 13th, and the second and final public hearing is on August 3rd, and we are scheduled for approval at that time.

BISHOP How much does the county budget for default special assessments?

GIROUX We can find out.

DUNLAP Please e-mail that to Elizabeth.

MITCHELL Jim I don't see anywhere in the CIP the use of cold mix on dirt roads.

WEBER That is correct. It is totally eliminated or if there are a couple of miles, we don't usually put that in the CIP. We did have a project in this past year that actually budgeted money for commercial cold mix asphalt, and we don't have that in here at the moment

MITCHELL So that is being phased out?

WEBER The preventive maintenance project includes latex modified. If we were to do some commercial cold mix, it would come out of preventative maintenance.

GIROUX On page 428, at the table at the bottom, you will see that in 2006 we are going to procure the equivalent of 11 miles of commercial produced cold mix and selectively apply it around the county.

MOTION: The County CIP is consistent with the Comprehensive Plan.

JOHNSON moved, **BISHOP** seconded the motion, and it carried 13-0.

4. McConnell Joint Land Study Final Report: Briefing on Study Recommendations.

DAVE BARBER gave a brief overview of the recommendations contained in the McConnell JLUS Report.

ALDRICH Regarding the Anti-Terrorism measures, who is to determine that? Is that going to be a joint effort?

BARBER Yes, most of the keys areas that are currently undeveloped are in either Sedgwick County or Derby. It will probably be a joint taskforce that will have to be created. MAPD staff is willing to work with MCAFB staff and come up with some alternatives and approaches and bounce those ideas off the different jurisdictions and we will have to work as a team on that.

ALDRICH The noise level reduction ... does that refer to the decibel levels? How is that going to be established what is acceptable and what is not acceptable?

BARBER It is pretty much established in the guidelines ... anything higher than 70 decibels falls under the federal guidelines requiring some kind of noise mitigation in building construction, and I think areas above 75 decibels actually have development restrictions.

ALDRICH That would be part of the disclosure?

BARBER Yes, noise issues and developments located in an APZ or clear zone.

ALDRICH If it is over the decibel criteria, then it would need to be disclosed to the potential buyers?

BARBER Yes, anything less than 65 decibels would not be disclosed but 65 decibels or up would trigger a disclosure.

DUNLAP No motion is necessary... this is a receive and file item.

❖ **SUBDIVISION ITEMS**

5. Consideration of Subdivision Committee recommendations from the meeting of July 21, 2005.

5-1. SUB 2005-62: One-Step Final Plat – THE TIMBERLANDS ADDITION, located north of Harry and west of 127th Street East.

NOTE: This is an unplatted site located within the City.

STAFF COMMENTS:

A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted. The sewer lateral for the house on Lot 2, Block 2 needs to be relocated from Timberlands. Since the west side of lots 3, 4 & 5, Block 2 are served by sanitary sewer, a short sewer main extension will be needed for the existing house on lot 2 to keep the lateral from being located under pavement.

B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.

C. City/County Engineering needs to comment on the status of the applicant's drainage plan. County Engineering has received a drainage plan. The drainage easement should be shown as floodway reserve and referenced in plat's text. A detailed flood study is needed to comply with FEMA. Floodway boundaries need to be adjusted to reflect flood study elevations.

The drainage plan must be approved by County Engineering prior to MAPC.

D. County/Traffic Engineering needs to comment on the access controls. The plat denotes two openings along 127th St. East in addition to a street opening. County/Traffic Engineering have approved one opening along 127th St. East for Lot 1, Block 2.

E. Although the plat denotes a 60-ft street dedication along 127th St. E, the Applicant requests a 50-ft right-of-way. The Access Management Regulations requires a 60-ft half-street right-of-way width along urban arterials.

The Subdivision Committee has required a 60-ft right-of-way along 127th St. E.

F. The County has required annexation of all of 127th St. East to City of Wichita.

G. County Surveying advises that the "Common Cor., Woodland Lakes Estates Third Addition/ Woodland Lakes Estates Fourth Addition" is actually 3 feet South of where arrow points.

H. The final plat tracing needs to denote right-of-way lines of 70 feet to the West.

- I. The Applicant shall guarantee the paving of the proposed streets. The guarantee shall also provide for sidewalks on at least one side of all through, non cul-de-sac streets.
- J. The Applicant has platted a 20-ft building setback along Lots 8-10, Block 2 which represents an adjustment of the Zoning Code standard of 25 feet for the SF-5, Single-Family District. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission.
- K. The Applicant is advised that if platted, the building setbacks along 127th St. East must be 85 feet from the centerline of the street to conform with the Zoning setback standard for County section line roads.
- L. The building setback along the South line of Lot 2, Block 2 needs corrected
- M. GIS needs to comment on the plat's street names. **Timberlands and Timberlands Ct needs revised to Zimmerly and Zimmerly Ct.**
- N. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations for Lot 7, Block 2. The Subdivision Regulations state that the maximum depth of all residential lots shall not exceed 2.5 times the width.
- O. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- P. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- Q. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- R. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- S. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- T. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- U. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- V. Perimeter closure computations shall be submitted with the final plat tracing.
- W. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- X. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Y. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD (cholloway@wichita.gov). This will be used by the City and County GIS Department.

MOTION: The applicant has requested deferral for 2 weeks.

JOHNSON moved, **WARNER** seconded the motion, and it carried 12-0.

5-2. DED 2005-20: Contingent Dedication of Ten Feet of Additional Street Right-of-Way, for property located south of Central and west of 127th Street East.

APPLICANT: Tim Connelly, 400 Jackson Heights Avenue, Wichita, KS 67206

AGENT/SURVEYOR: MKEC Engineering, 411 N. Webb Road, Wichita, KS 67206

LEGAL DESCRIPTION: A ten-foot contingent dedication of street right-of-way described as follows:
The west ten feet of Lot 10, Gilder's Gardens Addition, Wichita, Sedgwick County, Kansas.

PURPOSE OF DEDICATION: This dedication is associated with a lot split case (SUB 2004-129), and

is for ten feet of additional street right-of-way along Jackson Heights Avenue. This dedication is contingent upon the widening of Jackson Avenue.

STAFF RECOMMENDATION: Accept the Dedication.

MOTION: Approve subject to staff recommendations

DUNLAP moved, **BARFIELD** seconded the motion, and it carried 12-0.

5-3. **DED 2005-21: Dedication of a 20-Foot Utility Easement and DED2005-22 – Dedication of Ten Feet of Additional Street Right-of-Way, for property located on the north side of 21st Street North and west of Hillside.**

A) DED 2005-21: Dedication of a Utility Easement and **B) DED 2005-22:** Dedication of Street Right-of-Way for property located on the north side of 21st Street North and west of Hillside.

APPLICANT: Daniel A. Shea Revocable Trust, 3515 Bayview Ct., Wichita, KS 67204-2377

AGENT/SURVEYOR: Chris Bohm, Ruggles and Bohm, P.A., 924 N. Main Street, Wichita, KS 67203

LEGAL DESCRIPTION: **A)** A 20-foot Utility Easement described as follows: The west 20 feet of the east 111 feet of Lot 1, Letty Smith Addition to Wichita, Sedgwick County, Kansas.

B) Ten feet of additional street right-of-way described as follows: The south ten feet of Lot 1, Letty Smith Addition to Wichita, Sedgwick County, Kansas.

PURPOSE OF DEDICATIONS: The dedications are for construction and maintenance of public utilities and additional street right-of-way along 21st Street (associated with Lot Split No. SUB 2004-68).

STAFF RECOMMENDATION: Accept the Dedications.

MOTION: Approve subject to staff recommendations

DUNLAP moved, **BARFIELD** seconded the motion, and it carried 12-0.

❖ **PUBLIC HEARINGS – VACATION ITEM**

6-1. **VAC 2004-55: Request to Vacate Eldora Street Right-of-Way.**

APPLICANTS: Lynn & Sherry Nichols Malcon, Inc., c/o Dennis Malcon
Sean Properties, c/o John Lay City of Wichita

LEGAL DESCRIPTION: Generally described as that portion of El Dora between Dewey Street & Orme Street, that partially runs under Kellogg Avenue/US-54 (see attached legal)

LOCATION: Generally located south of Dewey Street, west of Washington Avenue, north of Orme Street and east of Mosley Avenue.

REASON FOR REQUEST: Revert to private use

CURRENT ZONING: Site is public ROW. Properties north and west of the site are zoned "LI" Limited Industrial. Properties to the south of the site are zoned "LI" and "GC" General Commercial. Properties to the east of the site are not zoned.

The applicants are requesting consideration to vacate that portion of El Dora Street as previously described. El Dora at this location is an uneven ROW in width and is generally is a dirt road in its northern portion and a concrete road in its southern portion. The applicants, all abutting property owners, propose to vacate the ROW to allow opportunities for expansion of their businesses and to control access onto their properties. There is sewer line and manholes in a portion of El Dora. There is an inlet groundwater pipe with a cleanout manhole and valve and an extraction well site, all part of the Gilbert-Mosley Groundwater Remediation System that is within all of the proposed vacated ROW. The Kansas Department of Transportation (K-DOT) uses El Dora for access to perform maintenance and repair on Kellogg/US-54, which crosses over the middle portion of the proposed vacated ROW; Federal funding is involved in Kellogg/US-54 through K-DOT. Comments from franchised utilities have not been received and are needed to determine if they have utilities in the easement. El Dora was originally platted in the Santa Fe Addition (recorded 1884) as Topeka Street on that portion generally north of the Kellogg/UWS-54 overpass. That portion south of the Kellogg/UWS-54 overpass was a platted alley in the Tush's Addition, recorded June 5, 1886.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, Environmental Health, K-DOT, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of El Dora, as described with conditions.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time June 5, 2005 which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described portions of the street ROW and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of the street ROW described in the petition should be approved with conditions:

- (1) Vacate that portion of El Dora as described in the legal description and generally described as that portion between Orme & Dewey Streets. E-mail Planning Staff with a legal description on a Word document.
- (2) Retain the entire vacated ROW as a utility easement for all public and franchise utilities, including all the lines and equipment of the Gilbert-Mosley Groundwater Remediation System within the ROW. Provide additional easement if needed.
- (3) Retain all Kellogg/US-54 ROW as determined by the Kansas Department of Transportation
- (4) Retain the entire vacated ROW as maintenance – access easement for public and franchised utilities, the City's Environmental Health Department and the Kansas Department of Transportation. If the vacated ROW is gated, provide guaranteed access to all the previously described departments, companies and agencies, including Fire.
- (5) Provide Planning Staff with a cross lot access agreement for recording with the Register of Deeds, which will ensure north-south access for the abutting property owners.
- (6) Provide a guarantee for the paving of Mosley Avenue, where it abuts the applicants' properties.
- (7) Dedicate by separate instrument(s) 40-feet of ROW to Mosley Avenue along its north portion where it abuts Lots 17-32, Block 2, the Santa Fe Addition and as needed. Provide the original dedication to Planning Staff for recording with the Register of Deeds.
- (8) Obtain all required permits prior to development on the vacated ROW, including the City's Environmental Health Department and the Kansas Department of Transportation.
- (9) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
- (10) All improvements shall be according to City Standards, including improvements on the vacated portion of El Dora as a private drive. If needed provide a guarantee for those improvements.
- (11) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate that portion of El Dora as described in the legal description and generally described as that portion between Orme & Dewey Streets. E-mail Planning Staff with a legal description on a Word document.
- (2) Retain the entire vacated ROW as a utility easement for all public and franchise utilities, including all the lines and equipment of the Gilbert-Mosley Groundwater Remediation System within the ROW. Provide additional easement if needed. .
- (3) Retain all Kellogg/US-54 ROW as determined by the Kansas Department of Transportation.
- (4) Retain the entire vacated ROW as maintenance – access easement for public and franchised utilities, the City's Environmental Health Department and the Kansas Department of Transportation. If the vacated ROW is gated, provide guaranteed access to all the previously described departments, companies and agencies, including Fire.
- (5) Provide Planning Staff with a cross lot access agreement for recording with the Register of Deeds, which will ensure north-south access for the abutting property owners.

- (6) Provide a guarantee for the paving of Mosley Avenue, where it abuts the applicants' properties.
- (7) Dedicate by separate instrument(s) 40-feet of ROW to Mosley Avenue along its north portion where it abuts Lots 17-32, Block 2, the Santa Fe Addition and as needed. Provide the original dedication to Planning Staff for recording with the Register of Deeds.
- (8) Obtain all required permits prior to development on the vacated ROW, including the City's Environmental Health Department and the Kansas Department of Transportation.
- (9) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
- (10) All improvements shall be according to City Standards, including improvements on the vacated portion of El Dora as a private drive. If needed provide a guarantee for those improvements.
- (11) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: Approve subject to staff recommendations

JOHNSON moved, **WARNER** seconded the motion, and it carried 12-0.

❖ **PUBLIC HEARINGS – ZONING ITEMS**

7. **Case No.: ZON2004-61** – Steve & Susan Walsh, Brandon & Julie Walsh and Tamara Walsh Request Zone change from "SF-5" Single-family Residential to "MF-18" Multi-family Residential on property described as;

A tract in the Northwest Quarter (NW/4) of the Southwest Quarter (SW/4) of Section Twenty-four (24), Township Twenty-seven (27) South, Range One (1) West of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at a point 660 feet South and 431 feet East of the Northwest corner of the Southwest Quarter (SW/4) of said Section Twenty-four (24); thence North parallel to the West line of said Quarter Section 210 feet; thence East parallel to the North line of said Quarter Section, a distance of 220 feet; thence South 210 feet; thence West 220 feet to the Point of Beginning. Generally located on the northwest corner of 1st Street – McComas Avenue intersection, one block east of West Street and one block north of Douglas Avenue.

BACKGROUND: The applicants' 1.06-acre unplatted tract is zoned "SF-5" Single-family Residential. There is currently a single story, brick, single-family residence built in 1950 on the subject site. The applicants are requesting a zone change to "MF-18" Multi-family Residential to allow the subject site to be redeveloped with apartments.

The abutting and adjacent properties to the east and north of the subject site are zoned "SF-5" and are developed as single-family residences, built primarily from the late 1950s to the mid 1960s. Properties southeast of the subject site are zoned "TF-3" Two-family Residential and are developed primarily as single-family residences, built in the 1920s and 1930s, and duplexes built in the late 1960s to the mid 1970s. The abutting property west of the subject site is zoned "LC" Limited Commercial and was developed in the late 1990s as a contractors warehouse, office and yard. This "LC" site has access and frontage onto West Street, a commercial corridor. Properties south and southwest of the site are zoned "B" Multi-family Residential and "LC" and are developed as story and a half apartments, built in the early 1970s. The applicants own these apartments.

CASE HISTORY: The 1.06-acre unplatted site has an existing single story, brick, single-family residence on it, built in 1950. DAB VI considered the request at its December 15, 2004 meeting and recommended denial of the originally requested "MF-29" zoning. The DAB found the density of the "MF-29" out of character with the surrounding area. The DAB recommended "MF-18" Multi-family Residential zoning with a Protective Overlay that would limit the development to no more than 9 units on the site, a maximum building height of 35 feet and subject to platting within a year. No member of the public in attendance at the DAB meeting spoke against the requested zoning change. Staff had received a recorded protest.

The MAPC considered this request at its December 23, 2004 meeting. During the meeting the applicant told the MAPC that he agreed with the DAB's recommendation that the zoning be "MF-18", but requested that the number of units allowed on the site be what was allowed in the "MF-18" zoning district. The applicant also requested that the height of the buildings be the "MF-18" zoning district's maximum of 45 feet rather than the 35 feet that DAB recommended, which matched the Unified Zoning Code's (UZC) Compatibility Standard for height of a multi-family building, Art. IV, Sec. IV, 2a. MAPC approved (11-0) the zone change to "MF-18", with a maximum height of 45 feet and subject to the property being platted within a year. Staff received two written protest against the zoning change that represents less than 20 percent of the protest land area.

At its regular meeting on Tuesday, February 1, 2005, the Wichita City Council considered the request. The action of the City Council was to return the application to the MAPC for reconsideration. The City Council directed the applicant to provide a site plan that accurately depicts the proposed multi-family development.

The site plan the applicant has provided shows 18 three-story units (identified as two stories on top of a garage and a 'basement') on the site, each with a single car attached garage and each with a parking spot/driveway. The proposed parking meets the UZC's parking standards for multi-family residential with two (2) or more bedrooms. The site plan shows a 6-foot solid screening fence along the north property line and along the north 20 feet of the east and west property lines. The east side of the site's proposed screening does not meet the UZC's minimum standards, per Art. IV, Sec. IV-3a, which requires screening along interior side and rear yard areas where the proposed multi-family zoning/development adjoins the property, zoned "SF-5". The adjoining northern and eastern properties are mistakenly identified as being zoned "TF-3", when they are zoned "SF-5". As scaled, the site plan shows a 20-foot landscaped buffer between the site's northern 10 units and the adjoining "SF-5" northern, eastern and "LC" western properties. The site plan shows proposed outside lighting, those being two spots on a landscaped area located in the middle of the interior circulation of the site. The site plan does not show the location of dumpsters. The site plan also shows the proposed vacated portion of 1st Street (platting process) as a 30-foot wide drainage and utility easement. The applicant has provided an elevation drawing of the proposed units, the floor plans and a brief narrative describing the units. The elevation drawings do not give a height for the proposed units.

At the DAB VI meeting on July 20, 2005, the applicant agreed to a 35-foot maximum height and agreed to provide extra parking within the south portion of the site. DAB VI recommended approval of the requested "MF-18" zoning, with a maximum height of 35-feet, additional parking and an approved site plan.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-5" Single-family Residential	Single-family residential
EAST:	"SF-5" Single-family Residential	Single-family residential
SOUTH:	"LC" Limited Commercial	Apartments
	"B" Multi-family Residential	Apartments
	"TF-3" Two-family Residential	Single-family residential, duplex
WEST:	"LC" Limited Commercial	Contractors warehouses, offices &
	"TF-3" Two-family Residential	yards, dental office

PUBLIC SERVICES: McComas Avenue is a paved residential street that ends at its intersection with 1st Street at this location. North of the subject site, McComas Avenue re-emerges as a one-block cul-de-sac, abutting the north side of subject site and ending at its intersection with 2nd Street. First Street is a partially paved (paved sections are broken up by unpaved sections) residential street that ends at its intersection with Gow Street, six short blocks east. A recent zoning case (ZON2004-45) with an associated platting case (SUB2004-126) will vacate the unimproved section of 1st Street from West Street to the west side of the subject site. An unimproved half section of 1st Street, abutting the subject site's south side, is all that remains of 1st Street, west of McComas Avenue. The subject site does have access to Douglas Avenue, an arterial, from McComas Avenue. Average Daily Trips (ADT) at the Douglas – West intersection, one block west and south of the site, are 22,971 ADTs north, 24,279 ADTs south, 7,452 ADTs east and 3,509 ADTs west. There is a current Capital Improvement Project underway, that could affect the subject site. Drainage improvements, with a underground storm water line, will run from West Street east along or under 1st Street to Athenian Boulevard then to the Arkansas River. There is gas, water, sewer and electricity for the site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan, as amended January 2002, identified this area as appropriate for "Low Density Residential" development. The "Low Density Residential" category provided for the lowest density (1 to 6 units per acre) of urban residential land use and consisted of single-family detached homes, zero lot line units, cluster subdivisions, and planned developments with a mix of housing types that may include townhouse and multi-family units. Since the earlier hearings on this case, the Comprehensive Plan has been amended (May 2005). The three density categories were merged into a single category of "Urban Residential", encompassing "the full diversity of residential development densities and types typically found in a large urban municipality". The residential locational guidelines of the Comprehensive Plan for medium density or high density residential use states that these developments should have direct access onto arterials or collector streets. The subject site does not have direct access to either an arterial street or a collector street, but can access onto Douglas Avenue (an arterial, a block south) off of McComas Avenue (a residential street) or onto 2nd Street (an arterial, a block northeast) off of 1st Street and then Alvena Street, which are both residential streets. The applicants' tract is also located in a revitalization area, which is an area that has experienced some decline but still has good market and development opportunities. Physical improvements and flexibility of regulations are recommended by the Comprehensive Plan to create innovative and economically feasible projects in the area.

RECOMMENDATION: Based on the information available prior to the public hearing, staff recommends the application be APPROVED for "MF-18" Multi-family Residential zoning subject to platting within a year and subject to a Protective Overlay that incorporates DAB VI's recommendations of a maximum height of 35 feet for all structures, additional parking and a revised site plan. The provisions of Protective Overlay #159 are:

1. The property shall be platted within one year of approval.
2. A site plan approved by the Planning Director and incorporating the Protective Overlay conditions shall be completed prior to recording of the plat.
3. Maximum height (as defined by the UZC) of the buildings shall be 35 feet for all structures.
4. An additional 5 parking spaces shall be provided.
5. Solid screening, 6 to 8 feet tall, shall be required along the north and east sides of the site where it adjoins properties zoned "SF-5".
6. Solid screening shall be provided around all dumpsters; all dumpsters must be located a minimum of 20 feet from the "SF-5" zoning districts.
7. Outside pole lighting shall be no taller than 14 feet in height including the poles, light fixtures and base, and be placed within the interior circulation landscape island. No exterior lighting on the rear of the multi-family units shall be placed higher than the 1st story.
8. Landscaping shall consist of a 20-foot buffer with a minimum of one shade tree or two ornamental trees every 40 lineal feet planted within the buffer but outside all utility easements along the north and east sides of the site, a

landscaped street yard and parking lot landscaping and screening per the Landscape Ordinance. The landscape plan shall be approved prior to the issuance of a building permit.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. The surrounding area around the subject site is zoned "SF-5" "TF-3", "LC" and "B". Use of the surrounding area north, south and east of the subject site is predominately single-family residential, some two-family residential, and the applicants' existing apartment complex. There are contractors' warehouses, offices and yards and a dental office west of the subject site. There is also small stand-alone commercial development and parking located along both sides of McComas Avenue south and east of the applicants' existing apartments and south of the existing single-family residences.
2. The suitability of the subject property for the uses to which it has been restricted. The site is developed with a single-family residence and could continue to be used for single-family residential, although the commercial and nonresidential uses abutting its west side have probably have made this type of development less desirable.
3. Extent to which removal of the restrictions will detrimentally affect nearby property. The "MF-18" zoning district would provide a transitional zoning between the abutting single-family and duplex residential development and the existing commercial development. The "MF-18" zoning would provide the applicants' an extension of their properties south of the subject site currently zoned "B" Multi-family Residential, but at a lesser density.
4. Conformance of the requested change to the adopted or recognized comprehensive plan and policies. The Comprehensive Plan shows this site as appropriate for low density residential. The Comprehensive Plan allows a mix of housing types that may include townhouse and multi-family units in the low-density residential areas. The applicants' tract is also located in a revitalization area, which is an area that has experienced some decline but still has good market and development opportunities. Physical improvements and flexibility of regulations are recommended by the Comprehensive Plan to create innovative and economically feasible projects in the area. The zoning change would allow the applicants to expand their existing apartment complex. The Planning Commission has a policy of generally supporting the expansion of existing businesses.
5. Impact of the proposed development on community facilities. The impact of this development on the community facilities will be minimal, with the exception of an expected increase in local traffic generated by the proposed multi-family residential development.

BISHOP This was returned by the City Council, I am wondering why they sent it back to us.

LONGNECKER The City Council directed the applicant to provide a site plan that accurately depicts the proposed multi-family development. The applicant has done that, and we have attached the site plan. The District Advisory Board (DAB) reconsidered the case at their July 20, 2005, meeting. The DAB asked the applicant if he would agree to a 35-foot maximum height for the apartment buildings, and to provide extra parking within the site. The applicant agreed to this request. The DAB recommended approval of the requested "MF-18" zoning, with a maximum building height of 35-feet, additional parking an approved site plan. There will also be a Protective Overlay included on this approval with the eight conditions listed on page 4 and page 5 of the staff report.

BISHOP I note the site plan and the drawing of the proposed development, but will any of these units be handicapped accessible?

STEVE WALSH, Applicant That is not in the current plan.

BISHOP It looks like a lot of stair climbing.

HILLMAN On your diagram you have it listed at 54-foot wide, and 46-foot deep is that a misprint?

WALSH I believe that it is for each individual unit. Each unit is 18 feet wide and 46-foot deep; the three units together are 54-foot.

HILLMAN On page 3 of the staff report, "The site plan shows a 6-foot solid screening fence along the north property line and along the north 20 feet of the east and west property lines." On page 5 of the staff report, condition #5 calls for solid screening of 6 to 8 feet along the north and east sides. I would hope that we would be able to change this to a minimum of 8 foot tall. Because the height of your project and the extra additional lighting in the area, I would think that you would want to contain that from the rest of the neighborhood.

LONGNECKER The height that the applicant has for these buildings is the maximum height that is allowed for the surrounding "SF-5" zoning on the north and east side as well as the duplex zoning across the street on the southeast side of the site. The building height is no different than what would be allowed for a single-family residence within this zoning. We have asked that the applicant not put any lighting on the rear of the units higher than the first story which we believe, when combined with a 6 foot screening fence and the landscaping within a 20-foot buffer, will offer sufficient buffering for the single-family residences. The 6-foot wooden fence is the minimum requirement per the zoning code. I think the applicant, with these conditions, has addressed the concern in regards to light flooding over into the single-family residences that abut it on the north and east sides.

GOLTRY If you go above 8 feet for a fence, it then becomes a building structure that requires pulling a specific building permit, and cannot be allowed within setbacks. So then it requires a variance to reduce setbacks to zero because of a difficult situation, and that is why we specify the height of the screening fences between 6 to 8 feet.

HILLMAN I am concerned about containing this site. This is going to be an active site. There will be a lot of trips made, and headlights and everything else.

LONGNECKER The applicant does have multi-family zoning which abuts this property on the south side. So there is a similar type of activity already in the neighborhood with the multi-family zoning where he has apartments.

ALDRICH Does the storm drain from West Street run in that section?

LONGNECKER The storm drainage from West Street will be located on the south side of his property in a proposed 30-foot drainage and utility easement. The applicant is going to have to plat this site because it is an unplatted tract. The applicant is aware of the storm drainage project, and has spoken to Storm Water in regards to what he needs to set aside for that project.

ALDRICH No problems with future maintenance requirements as far as any of those units being in the way?

LONGNECKER The units are outside of the easement.

BARFIELD On page 4, you speak of a current CIP project that could affect the site, explain that.

LONGNECKER Which would be the storm water project that was just referenced, and the applicant has spoken with the Storm Water Department, and the agency that is doing his platting is aware of that impact on his property.

MOTION: Approve subject to staff recommendations

ALDRICH moved, **WARNER** seconded the motion, and it carried 13-0.

8. **Case No.: ZON2005-29-** Kings Camp, Inc. (Richard Kelsey); Sedgwick County (Robert W. Parnacott) Request Sedgwick County Zone change from "RR" Rural Residential to "GC" General Commercial with a Protective Overlay on property described as;

A parcel of land lying in the Northwest Quarter of Section 14, Township 28 South, Range 3 West of the 6th P.M., Sedgwick County, Kansas described as: Commencing at the Northwest corner of said Northwest Quarter Section; thence along the North line of said Quarter Section on an assumed bearing of N 89 degrees 25'27" E for a distance of 550.00 feet to the point of beginning; thence continuing along said North line for a distance of 580.00 feet; thence S 00 degrees 00'00" E parallel with the West line of said Quarter for a distance of 615.00 feet; thence S 89 degrees 25'27" W for a distance of 580.00 feet; thence N 00 degrees 00'00" W parallel with the West line of said Quarter for 615.00 feet to the point of beginning. Except the North 40 feet thereof for road right-of-way. Generally located South of MacArthur and west of 231st Street West.

BACKGROUND: The application area (24575 39th Street South) is an 8.2-acre unplatted site located at the southeast corner of 39th Street South and 247th Street West. The applicant is seeking GC General Commercial zoning subject to a Protective Overlay that would permit the following uses: Single-family residence, manufactured home, auditorium or stadium, church, college or university, community assembly, day-care, limited; golf course, government service, group home, limited; group residence, limited and general; park and recreation, recycling collection station, private; school, elementary, middle and high; utility minor, automated teller machine, kennel, hobby; office, general; post office substation, recreation and entertainment, indoor and outdoor; recreational vehicle campground, restaurant, wireless communication facility, asphalt or concrete plant limited, research services, agriculture and agricultural research. The 8.2 acres are part of the applicant's larger ownership, approximately 60.37 acres, that contains King's Camp, which contains residences, group residence, recreational vehicle campground and a school. The application area has approximately 570 feet of frontage.

The application area is currently zoned RR Rural Residential with nonconforming use rights, and is developed with a building used for meeting rooms and a silo that has been converted to a climbing tower. The climbing tower and the assembly building would be used as accessory uses for the existing group residence, general only; however, the applicant wants to allow the general public to use these facilities. The applicant also wants to use the assembly building for a restaurant. The building is currently being used as a restaurant three nights a week. The applicant is seeking GC zoning since that district permits all three of the proposed uses - "auditorium or stadium," "outdoor recreation, outdoors" and "restaurant," by-right.

Access to the site is off of 39th Street. A community lagoon located some 1,854 feet south of the meeting/restaurant building provides sewage disposal. This community lagoon also serves the remainder of the King's Camp uses. Water service is provided through a private community well. Both the well and the lagoon are permitted through the Kansas Department of Health and Environment.

The Sedgwick County Sign Code allows 19 different types of signage in the GC district, including billboards. One 300 square-foot billboard would be permitted on this site. Up to 1,140 square feet of signage would be allowed on this site with a maximum size of 400 square feet for certain types of signs (e.g. wall, projecting, awning and canopy), and 300 square feet for ground or pole signs.

The existing building appears to be located closer to the centerline of 39th Street South than code specified minimums for major roadways. The building appears to be located approximately 65 feet from the centerline of 39th Street. Code minimum distance is 85 feet.

The application area is located in a largely rural area. There is a county owned gun range located to the north of the application area. To the east and south is the remainder of the applicant's larger ownership described above. To the west are Lake Afton, a county park and recreation area. In the larger area surrounding the application area there are agricultural uses and large lot residences.

The Unified Zoning Code requires either a Community Unit Plan or Protective Overlay when a request for Limited Commercial or General Commercial zoning is made for a tract six acres or larger.

CASE HISTORY: CoBZA 9-85 was an appeal of the County zoning administrator's determination that the Church of God State Camp, Incorporated operation of an RV campground was not a nonconforming use, but was an illegal use. The County BZA upheld the zoning administrator's decision that the RV campground was an illegal use. The applicant appealed the case to court, and ruled that the campground was a nonconforming use, and referred the case back to the BZA to define the scope of the use. The BZA determined that the number of RV pads did not exceed 16, and that the primary use of the property was by a religious and eleemosynary organization.

CU-332, granted on June 20, 1990, established a recreational vehicle campground on an approximately six-acre upside down "L" site that was owned by the Church of God State Camp, Inc. The Conditional Use included nine conditions of approval, among which included that the maximum number of RV or camping spaces is 66; the maximum length of stay for a RV is 14 consecutive days, with a minimum seven day absence required before the same RV can return to the camp.

CoBZA 2002-00009 was an appeal of an administrative interpretation that was withdrawn.

That administrative interpretation determined that the applicant had relinquished GC zoning nonconforming use rights by converting the recreational camping use to a group residence, general. The administrative interpretation concluded that, under the Unified Zoning Code, Sec. VII-B.4, once this change to a less intensive use occurred, the use of the property could not be changed to a less conforming use than group residence, general.

ADJACENT ZONING AND LAND USE:

NORTH: RR Rural Residential with a Conditional Use to permit a gun range; County gun range

SOUTH: RR Rural Residential; Large-lot residential, Lake Afton

EAST: RR Rural Residential; vacant

WEST: RR Rural Residential; Lake Afton

PUBLIC SERVICES: Public sewer is not available. An on-site community lagoon is in use. An on-site water well is in use. 39th Street South is a two-lane paved county highway carrying on an average day 1,585 trips. A sit-down restaurant without a drive through can generate between 94 to 158 average daily trips per 1,000 square feet. A restaurant with a drive through can generate as many as 696 average daily trips per 1,000 square feet. Planning staff is advised that the existing building may not be built to code standards for a restaurant.

CONFORMANCE TO PLANS/POLICIES: The application area is located within the City of Goddard's "zoning area of influence," and their planning commission will hear this case on July 14, 2005.

The application area is located in an area designated by the 2030 Urban Growth Area map as the "rural functional land use category." This category includes land located outside any cities' 2030 urban growth areas. Land so designated is intended to accommodate agricultural uses, rural based uses that are no more offensive than agricultural uses, and larger residential exurban lots, typically two acres or larger with provision for individual or community water and sewer services.

Comprehensive Plan commercial and office location guidelines state that: commercial sites should be encouraged to locate near arterial streets or major thoroughfares, and commercial development should have site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses.

Office uses should be located adjacent to arterial streets, and local, service-oriented offices should be incorporated within or adjacent to neighborhood and community scale, commercial development.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All properties surrounding the application area are zoned RR Rural Residential. The property to the north has a Conditional Use to permit a gun range; land immediately south has nonconforming use right to a school and group residences (King's Camp). Land to the west is a county park. This is a rural area where uses are located on large tracts of land when compared to urban standards and where all uses are of low intensity or are appropriate in a rural setting. Lake Afton holiday weekend traffic and the noise from the gun range probably create the most atypical impacts in this rural area.
2. The suitability of the subject property for the uses to which it has been restricted: The site could be used as currently zoned as it has RR Rural Residential zoning, and nonconforming use rights to uses first permitted by-right within the GO General Office district that are no more intense than the legal existing nonconforming uses. The building and climbing tower could continued to be used as meeting rooms and outdoor recreational activities as accessory nonconforming uses. The existing building may not meet building code for a restaurant. The restaurant would not be permitted as a nonconforming use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: This is a rural area as exemplified by the fact that there is not any nonresidential zoning for miles around this site. The closest commercial zoning appears to be located in Goddard or at Schulte. There is a Conditional Use for a gun range to the north, but the base zoning remains RR Rural Residential, and the facility is only open to law enforcement. Approval of GC zoning would introduce a zoning district that is inappropriate at this location, and would only lead to additional inappropriate requests. The proposal to

rezone this property is primarily proposed in an effort to solve the applicant's apparent illegal use of the site for the general public. Restaurants typically generate significant traffic, noise, litter and light. The restaurant that is in place today appears to be a small operation, but once the GC zoning is approved the applicant does not propose additional restrictions. An unrestricted auditorium could also produce significant traffic, noise litter and lighting. In the past, wireless communication facilities have been controversial requests; this proposal would allow the use.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial of the request would allow the applicant to continue to use the building for meeting space and the climbing tower for King's Camp residents. From the public's perspective, a denial would preserve the consistency of this area's rural zoning and character. Approval may offer the applicant a chance at greater economic gain, but would compromise the county's comprehensive land use goals and lead to additional inappropriate requests.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The request is not consistent with adopted comprehensive plan goals of maintaining the "rural" area for agricultural uses, rural based uses no more intensive than agricultural uses and for large-lot residences. Most commercial zoning that has been granted has been located at the corners of the intersection of two arterials. This site does not intersect two arterials; nor does the proposed PO address the additional typical site development standards usually contained in a commercial zoning request exceeding six acres: a site plan that establishes setbacks, screening, square footage of building coverage allowed, signage, etc.
6. Impact of the proposed development on community facilities: Sewer and water services are provided privately. The proposed uses will increase traffic volumes. A commercial use open to the public will likely lead to increase demand for Sedgwick County Fire Department, Emergency Management Services and County Sheriff services.

MILLER This is a somewhat confusing case. I will try to do the best I can to sort things out so that we get to the bottom line. Initially the red barn was allowed as a legal non-conforming use provided that it was providing accessory services to the King's Camp group residence. It is my understanding that they were using that for meetings but it was restricted to only meetings that involved the King's Camp group residence operation. It, at some point, got converted to this BBQ restaurant. (Referring to slides) This is an old farm silo that has been converted to a climbing tower, and it also was allowed as a legal non-conforming accessory use as long as it was used for the clients of King's Camp.

Over time these two uses then started being used for outside folks. The restaurant was never allowed as a non-conforming legal use but it could have been used as a meeting space. The silo could have been used as a legal non-conforming use for the patrons of the King's Camp Group Residence, but that also was apparently being allowed to be used for outside uses, and so that is what has triggered this whole application.

There is a debate among staff as to what kind of legal non-conforming uses they actually have rights to. In 2002, the County Code Enforcement Officer issued an opinion that they had rights to those uses that were no more intensive than "group residence, general" which is allowed in the "GO" General Office district. The applicant is of the opinion that he still has non-conforming use rights to "GC" General Commercial level uses because the RV camp that was originally permitted prior to 1985 when Countywide zoning went into effect, and when the site was owned by Church of God State Camp Inc., they had an RV campground that was in operation, and there was a court case and the court ruled that it was not an illegal use, sent it back to the County Board of Zoning Appeals to determine the extent of the use, and that was taken care of. But they have used that as the basis for what level of intensity of uses that he could apply for in a non-conforming situation. Because, as you know, under a non-conforming use situation you can change uses, you just can't change to a use that is more intense than whatever the non-conforming use was.

What they are requesting to do is to rezone the area that is under consideration to "GC" General Commercial, which would then, clear up the non-conforming issues and make the site (the application area only) totally conforming. They originally were requesting a Protective Overlay to go with this, and there is a list of uses in the staff report on page two. We went out to the Goddard Planning Commission, and their Planning Commission voted to recommend approval of the request but they eliminated all of the uses in the Protective Overlay except for allowing the "restaurant," allowing the "auditorium," which is the category that the meeting room would fall under, and allowing the "outdoor recreation" which would take care of the climbing tower. So their recommendation was to approve this to rezone to "GC" General Commercial, but put the Protective Overlay on it, and restrict it to the only "GC" General Commercial uses that were allowed are the "restaurant," the "auditorium" and the "outdoor recreation." There were some people that spoke, although none of them spoke in opposition to the zone change, they expressed some concerns in a general way but then they all said that a restaurant would be nice.

So with that staff is half-heartily recommending denial of this application. Since the Goddard Planning Commission recommended approval, and based on experience that we had earlier with similar cases in the area, there had been significant neighborhood opposition so we were just anticipating that would continue, and it did not. So we will leave that to your discretion on how you want to handle it.

HENTZEN Dale, is this within Goddard's growth area?

MILLER It is inside their zoning area of influence, just barely.

HETNZEN What does that give them? What kind of authority is that?

MILLER That means they have to be given the opportunity to hear the request before you hear it, and if they should make a recommendation of denial then that requires a unanimous vote by the County Commission to overturn their recommendation of denial.

DUNLAP Goddard recommended approval.

MILLER Correct.

ALDRICH The staff report says that the existing building may not met the Building Code for a restaurant. It says it may not. It does or it doesn't?

MILLER Based on my conversations with County Code Enforcement they say that it does not. But that does not mean that it can't be modified. It is just that at the time that they issued permits, and did the inspection they did not inspect it as if it were a restaurant, and they are telling me that the building plans did not indicate that it was being built to the Building Code that would handle a restaurant.

BARFIELD You are saying that everything that is there now is a legal non-conforming use?

MILLER Yes, it is based on the fact that on Mr. Kelsey's good faith he felt like he had the right to do uses that were permitted by right up to the "GC" General Commercial District.

DUNLAP Mr. Parnacott, you are shown here under the applicant area of this application, are you speaking as a staff member or the applicant?

BOB PARNACOTT I am speaking as the applicant. The applicant in this case is actually the Sedgwick County Board of Commissioners.

DUNLAP We would like to hear from the applicant now.

BOB PARNACOTT, Assistant County Counselor What this boils down to is a fairly honest disagreement about non-conforming use rights and the extent of those rights. How do you resolve that kind of dispute? You can certainly litigate that, and it would end up in a result that either Mr. Kelsey or myself would not like, and it would cause both of us or one of us some expenses and we felt, and the County Commissioners felt, that it would be more appropriate to come to an reasonable solution and that is what this proposal is about is to resolve the non-conforming use dispute by making it a conforming use by approving it as a zoning change.

It still means that it is a zoning case, and we still look at in terms of the Golden factors and it still has to go through the same process it would and of course this will go to the Board of County Commissioners for final approval.

BISHOP How can the County Commissioners be applicants?

PARNACOTT We are the applicant, because both the state statutes for zoning and our own zoning code provides that the governing bodies may initiate their own zoning applications on private properties. We can do that without the landowners' approval or permission, and in this case we are working in conjunction with the landowner so we have his consent in this. But we do have the state statutory and zoning code authority to initiate our own zoning applications.

SHERMAN How long has it been operating in this current state, when did this transfer of use happen?

PARNACOTT Mr. Kelsey maybe better able to answer that, but I think he has been operating about a 1 1/2 years in its current state as a restaurant and opening up the climbing tower to the public.

SHERMAN How long prior to that was it in the other state?

ALDRICH In the staff report under findings number four it states, "That approval may offer the applicant a chance at greater economic gain, but would compromise the county's comprehensive land use goals and lead to additional inappropriate request." How would this happen?

MILLER The example that I would give is the recent case that you heard at 53rd and Ridge where we indicated that you had had multiple requests for non-residential zoning because in an effort to fix a problem a site that was in an inappropriate location was rezoned to a commercial tract, and then once you do that then every other property owner that is in a similar situation, wants to be treated the same way, and so then you will have a domino effect. That is what that is referencing. While Mr. Kelsey's uses may be totally appropriate in terms of what he is trying to do, and the kinds of work he is trying to work, but from a land use perspective there is no other commercial zoning anywhere near this. I had to go clear into the City of Goddard or clear over to Schulte to find any non-residential zoning. If this is approved you will have a chunk of "GC" General Commercial out in the middle of nowhere, and I think you can expect to see other request from folks in similar situations.

PARNACOTT On the other hand, if you look at the area and who owns the property surrounding this, we have Lake Afton, which is County owned. We have the County gun range, and Mr. Kelsey owning King's Camp so in reality there is really not going to be any domino effect.

BISHOP However if we approved this it will run with the land?

PARNACOTT That is correct.

BISHOP So, someone else could purchase it?

PARNACOTT But it would be subject to these limited uses, and if a later landowner would want to do anything with this property other than an auditorium, meeting room for the public, restaurant, or outdoor recreation. They will have to come back here and get some kind of zoning change.

BARFIELD Isn't that what got us here in the first place? Didn't the original conditions go with the land also? Originally there were non-conforming issues here that were legal, and then all of the sudden they got changed to illegal without anybody coming before this body.

PARNACOTT That is not correct; they did not necessarily get changed to illegal. That is the nature of the dispute though. The way non-conforming use rights are, you start with a recognized use that was lawful at the time that the zoning got applied to the property that would no longer be lawful under that new zoning regulation. So prior to County zoning, that property is rural residential. It was zoned for a use that was basically RV camping. So that became the outside use level, or the most intensive use level for non-conforming use rights, and then that can change and reduce but it can't become greater. The question has become did he make a change in the use to part of the property at least when he changed from the RV camping to the "group residence, general." The dispute really lies on whether he meant that to change the use for the entire 60-acre parcel or just that portion that was being used for the group residence, which this 8-acre parcel was separate than that. That is the whole issue, whether or not these three uses that are being talked about are lawful non-conforming uses right now or unlawful uses. To resolve that dispute we are asking the MAPC to approve the zone change.

BARFIELD They were only lawful as long as they were tied with the Camp.

PARNACOTT That is the dispute. In the County's view, and staff's view, we believed that he had lost the greater non-conforming use rights when he made the change to group residence for the entire parcel, and the issue is a question of abandonment. Once you abandon a greater intensive use, you can't go back to it. The issue is whether he abandoned the RV camping uses that were associated with the property for that 8-acre parcel at the time that he made the change to group residence. Or whether he did not abandon that intent or that he did not intend to abandon that.

BARFIELD So if he did abandoned it then it becomes an illegal.

PARNACOTT It is a factual issue, and we agree to disagree with Mr. Kelsey and the County. If you look at the area involved, the suitability for these uses, I don't think that it is that unsuitable that it would be inappropriate under the Golden factors to say that, no this is not an appropriate zone change. We have the support of the Goddard Planning Commission, and the BOCC and Mr. Kelsey are the major landowners in the area, and there is only one other landowner besides us, and there are no protests, and there is not neighborhood opposition so when you look at this in the context of the Golden factors as we should, you don't see a detrimental impact. This site has been operating for 1 1/2 years and nobody has complained about it.

DICK KELSEY, 24401 W. MACARTHUR RD., GODDARD, KS I have owned the Kings Camp property since 1990, and when we purchased it from the Church of God, for years we did camps, family reunions, Saturday night BBQ's and frankly we have not abandoned any of those uses. We still do camps, and we did them this summer. We still do RV camping. There are RV's out there right this minute. We have not abandoned what we have been doing for many, many, years, and this may be a dispute with the County but we have not abandoned any of the uses.

A few years ago the County put a lot of money into redoing the road, and spent some money on the entrances. I had an ugly old barn right there on the corner right next to their entrances grown over with weeds, looking a mess and frankly, I felt like I should do something with that because we are not going to run a farm down there. They dug a pond behind the barn, and the County took a lot of dirt and paid for it, and I appreciate that. We decided that we would renovate the barn, and when we went in to get our permit I took an attorney with me, and the attorney testified at Goddard. We told them exactly what we were going to do. There was no vagueness about it. There was not fuzziness about it. We were going to have a BBQ place. We were going to have groups, and groups have been there since the 1940's. They accommodate different kinds of groups, church groups, and it was just another means of doing it. We have 25 buildings down there, and we use two to three of them for the boy's home. We thought the project would be \$75-\$100,000, and now \$250,000 later we have it finished. It was a challenge. It is a beautiful building and it is a great asset to the community. To conclude the request, to deny based on the fact that there are no other non-residential things in that area, there is a gun range.

TAPE CHANGE TAPE II SIDE B

That thing is noisy, and there is another gun range, and an observatory, all which basically are commercial type situations. I think it is a real asset to the area.

SHERMAN At what point did you switch from the private party situation or the private auditorium or meeting place and the BBQ place to public, how long has that been?

KELSEY About a week after we finished the barn about two years ago. It was about 1 1/2 years ago that the County approached me and said look lets just rezone this. Frankly, some other things got in the way, and we didn't get around to getting it done, they were carrying the ball on it, and I wasn't going to call BOCC and say let's go get it.

ALDRICH There is a dispute whether or not the restaurant is within Code or not. Would you do what it takes to bring that into the Code?

KELSEY First of all, it is in code. We have a commercial license, a food license, I am saying your report it wrong.

ALDRICH When Goddard Planning Commission approved this will you stay using the three uses?

KELSEY First of all, from a practical standpoint, those three uses are the only practical three uses that you could do. Goddard was concerned whether we would put in a dog kennel, or cement factory, and a bunch of other uses. The thing that they got most excited about was whether I was going to run a liquor store or a tavern. I told them no. We have one of those right down the street. I don't need to.

HILLMAN The County came in and modified some of your ground with a pond, and I assume you have a parking lot around the building. You are immediately adjacent to the lake. What is the slope of your parking lot now after they have done the work?

KELSEY Towards the new pond, it is about 30 feet from the building.

BISHOP You own some other land in that area, and I know it has been fairly well explained what the different perspectives are, and what the operative use of the land is. Is the possible rezoning of this piece of land regarded as any kind of compromise that means that you have finally conceded that the "GC" General Commercial use of the remainder of the land has been affected?

KELSEY No, the rezoning of this 8 acres is a direct request of the County to me, and I agreed to it, and I thought it was a fine idea, and these are the only things we want to do with it, and we have no other intentions, but I do not review this rezoning as affecting the status that I believe we have with the rest of the total property.

MOTION: Approve the zone change subject to Protective Overlay and conditions.

HILLMAN moved, MARNELL seconded the motion.

SUBSTITUTE MOTION: To deny the zone change request.

BISHOP moved, BARFIELD seconded the motion.

BISHOP I think this is a rural area and it is next to a public recreational resources and that concerns me.

MARNELL I could not imagine a better place for something like this having spent a lot of time out at Cheney Reservoir. There are no facilities close around except if you want to go to the marina and get something wrapped up. There were no restaurants. I found Lake Afton the same way.

BISHOP Lake Afton has had a problematic history, and the water has problems, and I believe there is a potential threat to the Lake Afton water because it will open the door for the remaining acres that the Mr. Kelsey owns and he has told us that he already regards those as "GC" General Commercial.

HILLMAN My question will be about the 8 acres itself, it is a little large for a restaurant and parking lot. He will be stuck with the three uses in the Protective Overlay.

SUBSTITUTE MOTION: FAILS 2-10. (MITCHELL, HILLMAN, DUNLAP, WARNER, DOWNING, SHERMAN, ALDRICH, MCKAY, HENTZEN, MARNELL, opposed)

ORIGINAL MOTION: To approve carries 10-2. (BISHOP and BARFIELD opposed)

9. **Case No.: CON2005-27** - Ino & Joseph Brian Scapa and Ken Elliott and Herb Alvarez Request Conditional Use to permit a bed and breakfast on property zoned "SF-5" Single-family Residential on property described as;

Lots 98, 100 and 102, on Maple Street, Coop's Subdivision of Lots in University Place Addition to Wichita, Sedgwick County, Kansas. Generally located at the southeast corner of Glenn and Maple, midway between Seneca Street and Meridian Avenue.

BACKGROUND: The applicants are requesting a Conditional Use to permit a Bed and Breakfast to be located in a two-story, brick, single-family residence zoned "SF-5" Single-family residential. The subject site consists of Lots 98, 100 & 102, Coop's Subdivision in the University Place Addition, 1825 West Maple. According to the Unified Zoning Code (UZC), a Bed and Breakfast (B&B) is an owner-occupied or manager-occupied residential structure that provides rooms for temporary lodging or lodging and meals for not more than 15 transient guests on a paying basis. A transient guest is a person who occupies a room for a period of less than one week at a time.

Most of the surrounding properties are zoned "SF-5" and are developed as older single-family residences with some type of wood, simulated wood or vinyl siding and a church. The exceptions include scattered "MF-18" Multi-family Residential and "MF-29" Multi-family Residential zoned properties. Typically these properties are too small to have been developed to the allowed density. There are also scattered "TF-3" Duplex zoned properties that are developed as duplexes or single-family residences. There are a few "LC" Limited Commercial zoned properties along Maple. These are small sites, including Wight Watchers, a small auto repair garage, and a few single story offices.

The subject site is located in the Delano Neighborhood and subject to the Delano Neighborhood Overlay District; Ordinance #45-695. Delano is one of the oldest (1870s) and most well established neighborhoods of the City. Friends University (1898) is a block west of the site and the Kansas Masonic Home is six-blocks east of the site. Both Davis Hall, at Friends, and the Masonic Home are registered as structures of historic significance, two of five such structures in Delano. A third structure, the Johnson Cottage, is located three blocks away. Friends University, the second largest university in the city (approximately 3,300 students), is and will probably continue to be an economic and cultural anchor of Delano. Delano is located immediately west of the downtown area of Wichita, across the Arkansas River, and contains Lawrence Dumont Stadium, the Ice Arena, and Exploration Place.

As previously mentioned the corner site is a brick two-story single-family residence, (built mid 1900) with a patio area, a concrete slab in a portion of the back yard and a drive from Maple to the alley that abuts the site's south side. The applicants have submitted a site plan. The site plan shows the footprint of the house, the drive, a proposed onsite parking area on the existing concrete slab located in the back yard, and existing metal fence post for a proposed wooden fencing. No existing or proposed landscaping,

lighting, signage or trash receptacles are shown. The applicant proposes to initially use three bedrooms for the B&B, provide meals for guest and to have the applicants/manager's live in the house. Onsite parking would need to provide three marked spaces for the guests using the three bedrooms. The applicants have failed to show the parking for the live-in applicants/managers. The applicants have provided a breakdown of the square-footage of every room of the two-story structure. Future plans, if the B&B is a success, include adding up to two or three more guest rooms and two or three more parking spaces. Future plans also include a food catering service and once or twice a month on-site dinners for 12-15 people. If the applicants are selling the on-site dinners to anyone not staying at the B&B, the activity would be considered a restaurant, which is not allowed in the "SF-5" zoning district. If the applicants can meet the UZC's Home Occupation general criteria and the specific criteria for the "SF-5" zoning district, a catering service could be a Home Occupation, if approved by the Zoning Administrator. There appears to be no other Bed & Breakfast uses located in the Delano Neighborhood.

CASE HISTORY: Platted as part of Coop's Subdivision in the University Place Addition, recorded February 8, 1887.

ADJACENT ZONING AND LAND USE:

NORTH: "MF-18" Multi-family Residential	Single family, four-plex, church
"SF-5" single-family Residential	
EAST: "SF-5" Single-family Residential	Single family
SOUTH: "SF-5" Single-family Residential	Single family
WEST: "TF-3" Multi-family Residential	Single family
"SF-5" Single-family Residential	

PUBLIC SERVICES: Maple Street is a four-lane arterial. Glenn Avenue is a residential street. There are no traffic counts for this location. Water and sewer are available.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Urban Residential" development. This residential category reflects the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes single-family detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle schools, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category. The Unified Zoning Code (UZC) permits a bed and breakfast with a Conditional Use in all residential zoning districts, with the exception of "MH" manufactured housing zoning. The site is also located within the Delano Overlay District and will be subject to the requirements of that District, including application to the Delano Design Review Committee, in regards to any exterior changes to the property including the screening and landscaping for the proposed parking lot area, a wall sign, lighting and any other proposed changes to the exterior of the site.

RECOMMENDATION: Based on the information available prior to the public hearing, the MAPD staff recommends the application be APPROVED, subject to the following conditions:

1. The site shall be developed and operated in general conformance with the MAPD and Delano Design Review Committee approved site plan and landscape plan. The current landscaping will remain in place and identified on the landscape plan. Any proposed improvements to the landscaping will be shown on the landscape plan and approved by the Planning Director.
2. The number of transient guests at any one time shall be the maximum allowed by the Unified Zoning Code and by the number of guest rooms provided in the residence. These rooms will be shown on a floor plan that will be approved by the OCI, as a condition to obtain the required change of occupancy necessary for a Bed & Breakfast in a single-family residential structure.
3. Signage will be as allowed by the Sign Code of the City of Wichita and the Delano Overlay District, will be shown on the site plan and reviewed by the Delano Design Review Committee.
4. The number of on-site parking spaces provided, will be one (1) space for the owner/live on site manager of the property and one (1) space per guest room. The existing parking area will remain paved and be marked. A drive connecting it to the alley must have an approved all weather surface. Any additional parking spaces needed, will be shown on the site plan and must be located in the rear or side yards and not block the sidewalk or the alley. On-site parking will meet the Delano Overlay District's screening and landscaping requirements and be reviewed by the Delano Design Review Committee.
5. The applicant shall obtain all inspections, permits and license from the City, prior to operating the Bed & Breakfast.
6. The owner or the manager of the Bed & Breakfast will reside in the primary structure.
7. Identify existing lighting on the site plan. The Delano Design Review Committee must approve any additional proposed lighting.
8. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area is mostly single-family residences, zoned "SF-5" with scattered multifamily zoning with houses converted to apartments and scattered "TF-3" zoning containing duplexes or single-family residences. Friends University is the dominant development in the immediate area and in the Delano neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-5" Single-family Residential and is developed as a single-family residence, which is appropriate for the site.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The Conditional Use permit for a Bed and Breakfast on the site will encourage the preservation of the current structure with a minimal amount of change in its current use. The detrimental affect of the Conditional Use on the nearby properties will be minimal due to the conditions of approval. The requirements of the Delano Overlay District will up grade the proposed parking area and ensure any changes to the site and building will be in compliance.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies this property as "Urban Residential". The Conditional Use for a Bed & Breakfast would encourage preservation of the current structure, with the possibility income generated by the business being invested in the maintenance of the structure. The Delano plan does not exclude a Bed & Breakfast at this location. A Bed & Breakfast located at this site would have close proximity to Friends University, the Kansas Masonic Home, Lawrence Dumont Stadium, Exploration Place, the riverfront and downtown and be available to visitors wanting quick access to those mentioned areas.
5. Impact of the proposed development on community facilities: Minimal, with consideration that all parking would be on-site and the parking area is already partially improved with an approved all weather surface. City utilities would remain as they are.

ALDRICH What is the Delano Design Review Committee and what authority do they have over this request.

DUNLAP This is not the venue to explain that committee. We should have a retreat and explain these committees for all the new members. It is a complex organization, and it was hard fought for about five years on both sides of the issue. They do have a great deal of authority and they can squash the whole idea if they want to.

ALDRICH I still want an explanation of what that Committee is, and who are they?

DALE MILLER It is a Board that is made up of staff and property owners from the Delano neighborhood. Their sole purpose is to review the exteriors and the modifications to buildings when buildings get remodeled. They try to ensure that the remodeling will fit in with the architectural style of the area and the era. The design review is to maintain the unique Delano character.

ALDRICH What was Delano back in the 1800's?

MILLER It was a separate community. It was the red light district for Wichita, which would be another way to describe it.

MCKAY It was where the good-old boys lived.

WARNER Is it a requirement that the Delano Design Review Committee has to review this and approve this request, or is this something that staff put in there?

LONGNECKER According to the ordinance that this body passed, this is a process that the applicant will have to go through.

BARFIELD What about signage?

LONGNECKER We have cited the signage as what is allowed in the Delano area, per the ordinance. We could have building or wall signs that would be allowed on the property, and they all must be approved to design, color, material, placements, method of attachment etc., as stated in the ordinance.

KEN ELLIOT I am the applicant. We plan four rooms, with one used as a residence for management and three as guest rooms. We don't propose any changes to the structure, interior or exterior. I have some photos from one of the improvements that we just recently made, which was done on all of the eaves. They were recently primed and painted, and all of the window seals were also primed and painted. The building requires no interior or exterior changes at this point. We are just looking at a three-room bed and breakfast inn.

HENTZEN Do you have any problems with the staff recommendations?

ELLIOTT I think they are all appropriate, and I have no problems with them.

BARFIELD Do you have room for offsite parking for four vehicles?

ELLIOTT We do, there is concrete slab in the back of the property, which fits two cars comfortably. The driveway that you see along here on the left side of the photo extends all the back to the alley. Our intention is that two cars can also park in the driveway. Because it circles around from Maple and meets the alley, neither car using the driveway would be block in. The two cars on the slab have direct access onto the alley, from which they can exit onto Glenn. Nobody should be blocked in, and everybody should be able to get in and out at anytime.

SHERMAN You say three rooms now, are there a maximum can you expand this operation?

ELLIOTT My understanding is that it will allow a maximum occupancy of 15 overnight guests there at any one time.

SHERMAN Would that be 15 rooms?

ELLIOTT No that would be 15 guests. At this point we don't have the off street parking to handle that many guests, and we don't have any intention or plans to add parking at this point.

SHERMAN What do you think would be reasonable if you started out with three, would it be five or ten?

ELLIOTT The next step would probably be four guest-rooms if we plan to keep one, full bath, per guest room. One of the other difficulties with this property is the plumbing and putting in an additional bathroom. It is not configured easily so there would have to be a strong incentive in terms of booking out on a regular basis in order to justify making that expense to add bathrooms. I don't see that happening soon. I don't see enough volume there to really justify adding a bathroom and adding parking.

ALDRICH Any expansion would be based on available parking?

ELLIOTT There is a site plan, and I relied on some drawings and a sketch I did myself. I apologize that it was not exactly to scale. At the bottom of the site plan I put in some fence post for a possible fenced in back yard. If we were to expand, we would take out the proposed fence and expand the concrete slab east. I think we could probably accommodate an extra vehicle, possibly two, if we expanded a little bit to the west. But right now what we are planning is to use the fence post area as an outdoor patio area for guest with a wooden fence.

ROBERT SHANLEY, 1901 MAPLE STREET, WICHITA, KS 67213 I am here to speak against the request. Presently this a residential area, and although there is other commercial type activity going on in the neighborhood, all the property immediately adjacent to this structure is residential in character, with the exception of the church. A block in every direction is mostly occupied by homes. The other thing that I do not like about the request is the incremental nature of the proposal; we are talking about three guest rooms now, then four later, and maybe five after that. Then adding catering services. Maybe having a once a month mystery dinner with about 10-15 people coming to that, and that will bring a lot more people into the neighborhood on a regular basis, and any kind of neighborhood watch activity is predicated on the notion that you can identify your neighbors, and in this case we would not be able to do so.

LONGNECKER This application is for a bed and breakfast. The applicant has also provided a narrative that is with your staff report, which has included possible future uses of the site. Those include a food catering services, and once or twice a month onsite dinners for 12-15 people. Staff has noted that if the applicants were selling the onsite dinners to anyone not staying in the Bed and Breakfast that the activity would be considered a restaurant, which is not allowed in this zoning district. A catering service has a possibility to be considered as a home occupation as long as it meets the general criteria that is in the UZC, and the specific criteria for this specific zoning which is more restrictive. They would have to apply to the Zoning Administrator for the catering service, and he would have to approve that application.

BISHOP If in the event of a catering service that does qualify under the home occupation regulations, my understanding is that would require a limitation of any additional employees?

LONGNECKER "SF-5" Single-family residential does not allow any employees that are not living on-site.

ELLIOTT We have targeted this structure for a business class Bed and Breakfast, for the business traveler, visiting professors, or athletics here for training or a game at Friends University, Newman University, or the Masonic Home. This would be a great place for people to stay while visiting parents who are being cared for at the Masonic Home.

SHERMAN Will there be an on-site manager or will there be a manager just come if there is a guest there, which is it going to be?

ELLIOTT We are planning to have a resident manager and that person is Herb Alvarez.

MOTION: Approve subject to staff recommendations.

MCKAY moved, **WARNER** seconded the motion, and it carried 12-0.

10. **Case No.: ZON2005-30** – Samuel and Judith Eberly, Chad Eberly (owners); Baughman Company, PA, c/o Terry Smythe (agent); Insite Medical Partners, c/o Dan Unruh (contract purchaser) Request Sedgwick County Zone change from "SF-20" Single-family Residential to "GO" General Office on property described as;

The east 920.00 feet of the west 1823.00 feet of the north 740.00 feet of the NW/4 of Section 12, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, subject to road rights-of-way of record. Generally located on the south side of 21st Street, east of 135th Street.

BACKGROUND: The applicant requests "GO" General Office zoning on a 13.7-acre unplatted site, currently zoned "SF-20" Single-Family Residential, for an office/medical complex development. The application area is south of 21st Street North and 860 feet east of 135th Street West. Most of the application area is under a Conditional Use (CU 281) for private outdoor recreation, the remainder of the site is used as a farmstead. The Cowskin Creek runs along the eastern portion of the application area. FEMA maps show that a portion of the site is in the floodway and the 100-year flood plain.

North of the application area, across 21st is agricultural land, a church site, and property approved for "NR" Neighborhood Retail zoning with a PO restricting uses to those in the Neighborhood Office district and photography studio; this NR zoning is subject to platting. East, west and south of the application area is property owned by the applicant, and under agricultural or outdoor recreation use. Further east of the site is SF-5 zoned property in the City of Wichita, and developed with single-family residences. Further west of the site is the 135th intersection, with SF-20 zoned single family development, LC zoning at the southeast corner with a City pump station and vacant commercial land. Northwest of the intersection is the YMCA development (DP- 276).

CASE HISTORY: The property is unplatted. Most of the application area is under Conditional Use CU 281 for outdoor recreation, approved in 1985.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-20"	single-family residential, church, agriculture
SOUTH: "SF-20"	agriculture, outdoor recreation
EAST: "SF-20", "SF-5"	agriculture, single-family residential
WEST: "SF-20", "LC"	agriculture, pump station, single-family residential, YMCA

PUBLIC SERVICES: Traffic counts on 21st Street North east of this site were 5,723 in 2003. 21st Street is a paved arterial at this location; the 2030 Transportation Plan designates this section of 21st to remain a two-lane arterial.

Existing half width right of way (ROW) on 21st Street North is 85 feet at the west boundary of the site, and 100 feet at the east boundary of the site. The site currently has two access points to 21st Street North.

Other normal public services are available or are in the process of being extended to the site.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide", as amended in May of 2005, of the *Wichita-Sedgwick County Comprehensive Plan* identifies the majority of site as appropriate for "parks and open space", and the remainder of the site as within the "Wichita 2030 Urban Growth Area." North of the site, across 21st Street, is designated as a future park site.

The Office Locational Guidelines of the Comprehensive Plan recommend that office sites be generally located adjacent to arterial streets. The plan recommends that large-scale office development should be encouraged to locate within the CBD. Local, service oriented offices should be incorporated within or adjacent to neighborhood and community scale commercial development. And, low-density office use can serve as a transitional land use between residential uses and higher intensity uses.

The Unified Zoning Code (UZC) would require compatibility setbacks between non-residential and residential development, as well as screening requirements for office development at this site. The Access Management Policy would limit the number of access points and their spacing along 21st Street North. The Landscape Code would require a landscape plan consistent with that code for office development at the application area. And, the Sign Code would limit signage for office development at this site.

RECOMMENDATION: The proposed zone change is not in conformance with the "2030 Wichita Functional Land Use Guide" recommendation of parks and open space; it is in conformance with the recommended office locational guidelines. Office use at the application area could buffer residential uses to the east from more intense development at the 21st/135th intersection. Sufficient right of way exists on 21st Street North to increase the number of lanes, if required by increased traffic. Drainage at this site is of concern, as a portion of the site is floodway and 100-year floodplain. The platting process includes a drainage plan requirement, which must be approved by the appropriate engineer.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to platting within one year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: This proposal is not consistent in terms of zoning, uses, or character with the surrounding agricultural uses. The proposed zone change could serve as a buffer between residential uses to the east, and more intense development at the arterial intersection.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed with single-family use as currently zoned. Flood plain and drainage issues will likely affect development at this site regardless of zoning designation.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Rezoning and office development could have a negative effect on the single-family residential uses east and west of the application area; and could have a negative effect on future surrounding residential development. However, sufficient right of way exists for road improvements; and code requirements for compatibility setbacks, screening, landscaping, and signage limitations should mitigate that impact. Any development, whether residential or non-residential, will require a drainage plan to ensure surrounding properties are not flooded.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "2030 Wichita Functional Land Use Guide" of the *Wichita-Sedgwick County Comprehensive Plan* identifies this area as "parks and open space", and "Wichita 2030 Urban Growth Area." The proposed development is generally in accordance with the office locational guidelines of the plan.

5. Impact of the proposed development on community facilities: Traffic increases from the proposed development could impact the immediate area; sufficient right of way exists at the site for road improvements. Other community facilities are being extended to serve new development in the vicinity.

MITCHELL On page 3 of the staff report under recommendations, it says, "Sufficient right of way exists on 21st Street North to increase the number of lanes, if required by increased traffic." There is a considerable difference in elevation between 21st Street and most of this property, and a terrible time to put the sewer in without additional right of way, and I don't believe we can widen 21st Street even with the 60 feet that is currently requested. So if and when this comes to platting I think that would be an issue.

BARFIELD I remember when the YMCA was before us there was an awful lot of concern about flooding in that area. I notice in the staff report that drainage is a problem on this particular site.

MILLER Yes, and at the time of platting if this approved they will have to submit a drainage plan and have that review and approved by the appropriate engineer just the same as we did with the YMCA.

MARNELL It seemed to me like this very applicant came before us when we had the YMCA case, and complained that there was some kind of drainage overlay or restriction on development.

MILLER I will let you ask the applicant.

TERRY SMYTHE BAUGHMAN COMPANY For the most part we agree with staff comments. You are correct a couple of years ago with the YMCA case this owner had a lot of questions about the drainage and the flooding issues that might occur along the creek out there. I believe that since that point in time he has been better educated about the process, and how to develop the property, and how you address and answer questions concerning drainage. We have purposely in our application area included parts of the floodway area so we could better adequately address how the drainage is going to be done during the platting, and how we will retain the water, and where we retain the water.

RAY BOESE, 13414 W 23rd Street N., Wichita, KS 67223 I live two blocks north of Eberly Farms. I am concerned about the application. It said the property across the road was zoned "NR" Neighborhood Retail with the override of Neighborhood Office district photographic shop only. Here he is wanting to go "GO" General Office. I got a copy of what is allowed in that district. It includes a lot of uses. I would like to see this property...Mr. Eberly told me two months ago that he did not have enough business in the wintertime, and that he wanted to put a building up there for businesses to come in and have their annual meetings. Now I understand this property has been sold to a medical company to put in medical services. I would like to have this strictly medical. No insurance companies, no gift shops, strictly a medical overlay. If he can do all these other uses later on I will be very disappointed.

TERRY SMYTHE I spoke with Mr. Boese in the hall during the meeting here, and I spoke with the Contract Purchaser of the property, and they have agreed to reduce through a Protective Overlay a number of uses that gentlemen may find offensive. This is really going for an office medical complex. There are a lot of uses that occur now days in the medical profession, like the eye clinic, spinal hospitals, so the line between a medical hospital and a medical clinic has been blurred.

I can run down the same list you have that they are willing to give up: multi-family, manufactured home, accessory apartment, group residence (limited and general), cemetery, community assembly, correctional placement residences (limited and general), golf course, group homes, parks and recreations, recycling collection stations, schools (elementary, middle, and high schools), minor utilities. Under the small commercial uses we will give up: automatic teller machine, bed and breakfast inn, broadcast studios, funeral homes, hotel/motel, marine facility recreational, parking area commercial, wireless communication facility and the limited asphalt concrete batch plants.

SCHLEGEL If you would want to go with what he just suggested you would move for approval of the "GO" General Office zoning with a Protective Overlay with that list of uses.

MITCHELL Then that list would be attached before it went to the governing body?

MCKAY They're a lot of uses under "GO" General Office, and I am having a little problem with the 10-12 uses that you may have taken off of it. I would like to have a complete list of what they are going to put in there, not the ones that he just said they could live without.

ALDRICH I would like the same information that there be a list of what they are going to put in there, and that would be it.

SMYTHE On page 67 & 68, we want to have on this property, through a Protective Overlay that allows single-family and duplex, assisted living, church or place of worship, college or university, convalescent care, daycare, hospital, medical services, general offices.

MOTION: Approve subject to staff recommendations, and the Protective Overlay that will allow the following uses only: single-family duplex, assisted living, church or place of worship, college or university, convalescent care, daycare, hospital, medical services, general offices.

MARNELL moved, **MITCHELL** seconded the motion.

BISHOP I do not intend to support the motion because I have a hard time voting for development in the floodway.

MOTION: carried 11-1. (**BISHOP** opposed)

11. Other matters/adjournment.

DUNLAP Hoyt Hillman will be serving on the Subdivision Committee and Denise Sherman will be moving to the Advance Plans Committee.

SCHLEGEL We will be putting on the Sept 8th Agenda the election of a new Chair and Vice Chair.

MCKAY There are going to be about 3-4 Commissioners absent at that meeting.

The Metropolitan Area Planning Department informally adjourned at 4:10 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2005.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)